

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 12 April 1989)

(SENATOR MACKLIN)

A BILL

FOR

An Act to provide for the holding of referenda
on bills proposed by members of the public

BE IT ENACTED by the Queen, and the Senate and the
House of Representatives of the Commonwealth of Australia,
as follows:

Short title

- 5 1. This Act may be cited as the Legislative
Initiative Act 1989

Commencement

2. This Act shall come into operation on the day on
which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears:

"bill" means a Bill for an Act in a form appropriate to be passed by the Parliament of the Commonwealth;

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"Commission" means the Australian Electoral Commission established by section 6 of the Commonwealth Electoral Act 1918;

"eligible elector", in relation to a referendum concerning a proposed bill endorsed on or annexed to a petition under this Act, means a person who was, at the time of the last general election of the House of Representatives held before the commencement of the signature period in respect of the petition, qualified to vote for the election of that House;

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"form for signature" means a form for signing a petition printed in accordance with section 5 and attached to a copy of the petition printed in accordance with that section;

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"petition" means a petition under this Act;

"prescribed number of eligible electors" means a number of eligible electors equal to 2.5 percentum of the number of eligible electors who voted at the relevant general election of the House of Representatives or, if that number is not a whole number, the next higher whole number;

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"signature period", in relation to a petition, means the period fixed by the Commission under section 6 in respect of that petition.

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3. Legislative Initiative Bill No. ,1989

Registration of proponent

5 4. (1) A person, or a body of persons whether incorporated or unincorporated, may make application as prescribed to the Commission to be registered as the proponent of a proposed bill.

(2) Subject to this section, the Commission shall register the applicant as the proponent of the proposed bill.

10 (3) Where application is made by a body of persons, whether incorporated or unincorporated, the Commission shall not register the body unless:

15 (a) the objects of the body include the proposing of bills for enactment by the Parliament of the Commonwealth; and

(b) the bill to which the application relates is primarily concerned with a matter or matters within the objects of the body.

20 (4) Where 2 or more applications are made under subsection (1) in respect of the same proposed bill, or in respect of proposed bills that are substantially the same as each other, the Commission:

(a) shall register the applicant who:

(i) is eligible to be registered; and

25 (ii) made the earlier or earliest of those applications;

as the proponent of the proposed bill in respect of which the application was made; and

30 (b) shall refuse to register the other applicant, or each of the other applicants, as the proponent of the proposed bill to which that applicant's application relates.

(5) Nothing in subsection (4) prevents a person, or a body of persons whether incorporated or unincorporated, from:

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- (a) agreeing with the proponent of a proposed bill for the person (or body of persons) and the proponent to promote the case in favour of the bill jointly;
- (b) otherwise assisting a proponent of a proposed bill in promoting the bill; or
- (c) sharing with the proponent of a proposed bill the costs of and incidental to the promotion of the bill on terms agreed to between them.

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Petition for referendum

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5. (1) The proponent of a proposed bill may, within such time, if any, as is prescribed after the proponent is registered, submit to the Commission a draft petition requesting the Governor-General to cause a referendum to be held concerning the proposed bill.

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(2) A copy of the proposed bill shall be endorsed on or attached to the draft petition.

(3) The Commission shall cause to be printed, at the cost of the proponent, copies of the petition and proposed bill endorsed on it, or annexed to it, together with forms for persons who wish to do so to sign the petition.

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(4) The number of copies to be printed shall be such number as is requested by the proponent, being, in respect of forms for signature, not less than a number that will be adequate to enable signature by electors to a number not less than the prescribed number of electors.

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(5) The Commission shall, upon payment of the cost of the printing, make the printed copies available to the proponent.

5 (6) A form for signature shall make provision for, in addition to the signatures, the full name and address of each person signing the petition, the date on which each person signs the petition and the electoral roll number of each person who signs the petition.

(7) The copies of the petition shall be numbered in sequence commencing with the number 1, and be marked so as to identify them as copies printed in accordance with this section.

10 (8) The copies of the forms for signature shall be numbered in sequence commencing with the number 1 and be marked so as to identify them as copies printed in accordance with this section.

Period for collecting signature to petition

15 6. The Commission shall fix, in respect of a draft petition submitted to it, a period of six months commencing on a date not earlier than 7 days after the date on which the copies of the petition and of the forms for signature are made available to the proponent.

20 **Objectors to proposed bill**

7. (1) At any time after a person or body of persons is registered as the proponent of a proposed bill and before the expiration of the signature period in respect of the bill, another person, or body of persons whether
25 incorporated or unincorporated, may make application to the Commission, as prescribed, to be registered as the opponent of the proposed bill.

(2) Subject to this section, the Commission shall register the applicant as the opponent of the proposed
30 bill.

(3) Where application is made by a body of persons, whether incorporated or unincorporated, the Commission shall not register the body unless:

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- (a) the objects of the body include the opposing of bills proposed for enactment in accordance with this Act; and
- (b) the proposed bill to which the application relates is primarily concerned with a matter or matters within the objects of the body.

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(4) Where 2 or more applications are made under subsection (1) in respect of the same proposed bill, the Commission:

- (a) shall register the applicant who:
 - (i) is eligible to be registered; and
 - (ii) made the earlier or earliest of those applications;as the opponent of the proposed bill; and
- (b) shall refuse to register the other applicant, or each of the other applicants, as the opponent of the proposed bill.

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(5) Nothing in subsection (4) prevents a person, or a body of persons whether incorporated or unincorporated, from:

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- (a) agreeing with the opponent of a proposed bill for the person (or body of persons) and the opponent to promote the case against the bill jointly;
- (b) otherwise assisting the opponent of a proposed bill in opposing the bill; or
- (c) sharing with the opponent of a proposed bill the costs of and incidental to the opposing of the bill on terms agreed to between them.

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Signature of petition

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8. (1) During the signature period in respect of a proposed bill, a person who:

- (a) wishes to do so; and
- (b) is an eligible elector,

may sign the petition by signing his or her name on a form for signature printed in accordance with section 5, being a form attached to a copy of the petition also printed in accordance with that section.

5 (2) A person who signs a petition as provided in subsection (1) shall set out, in relation to his or her signature, his or her surname, christian or given names and place of living (being the person's surname, christian or given names and place of living at the time of the general
10 election of the House of Representatives that last preceded the commencement of the signature period).

(3) A person who signs a petition shall not set out, in relation to his or her signature, information of a kind referred to in subsection (2) that is, to the knowledge of
15 the person, false or misleading in a material particular.

Penalty: \$1,000.

(4) Where a person signs a petition but fails to comply either in whole or in part with subsection (2), the person's signature is of no effect and shall be disregarded
20 for the purposes of this Act.

Presentation of petition

9. (1) Where, during the signature period, the petition has been duly signed by not less than the prescribed number of eligible electors, the proponent may, after the
25 expiration of that period, present the petition and signatures to the Commission.

(2) Before presenting a petition to the Commission, the proponent shall, as far as practicable, insert on the forms for signature, in relation to each signature, the
30 electoral roll number that is set out in a set of Electoral Rolls designated to the proponent by the Commission in respect of the person whose name and residential address appears on the form in relation to that signature.

Commission to check signature

10.(1) Where a petition and signatures are presented to the Commission, the Commission shall check a random sample of the persons who signed the petition.

(2) The sample shall consist of signatures, chosen at random, to a number not less than 5 per centum of the number of signatures to the petition.

(3) Where the proponent has been unable to insert an electoral roll number, on a form for signature, in relation to the signature of person, the Commission shall disregard the signature for the purposes of this Act, unless the proponent satisfies the Commission that the person is an eligible elector.

(4) The signatures on the forms for signature included in the sample shall be checked as follows:

(a) the Commission shall first ascertain, in respect of each person whose signature purports to be on a form for signature, whether that person appears to be an eligible elector;

(b) the Commission shall, secondly, in respect of each person who appears to be an eligible elector, request that person, by letter addressed to the person at the address shown on the form for signature, to confirm, by writing under his or her hand posted to, or delivered at, an office of the Commission within 21 days after the letter was posted to the person, that he or she did sign the petition; and

(c) the Commission shall, thirdly, ascertain the number of signatures in the sample and the number of persons who have so confirmed that they did sign the petition and shall calculate

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the percentage that the number of persons who confirmed that they did sign the petition constitutes of the number of signatures in the sample.

5 (5) For the purpose of paragraph 4(a), a person shall be taken to appear to be an eligible elector if the name, address and electoral roll number of the person appearing on the form for signature is the same as the name, address and electoral number of a person appearing in a set of the
10 Electoral Rolls designated by the Commission for the purpose of subsection 9(2).

Presentation of petition to Governor-General

11.(1) Where, after having complied with section 10 in respect of a petition, the Commission is satisfied that the
15 adjusted number of signatures to the petition, ascertained as provided in subsection (2) of this section, is not less than the prescribed number of eligible electors, the Commission shall present the petition to the Governor-General.

20 (2) The adjusted number of signatures to a petition shall be ascertained by deducting from the total number of signatures any signatures that are, under this Act, to be disregarded and then ascertaining, in respect of the result, the number that is the same percentage of the result as the
25 percentage ascertained in accordance with paragraph 10(4)(c), and that number is the adjusted number of signatures to the petition.

(3) Where the Commission has reasonable grounds for believing that a person has signed the petition more than
30 once, those signatures in excess of one signature shall be disregarded for the purposes of this Act.

Referendum concerning proposed law

12.(1) Where a petition is presented to the Governor-General, the Governor-General shall, subject to subsection (3), at the next general election of the House of Representatives, submit the proposed bill to which the petition relates to the electors in each State and Territory qualified to vote for the election of the House of Representatives.

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(2) Where a prepared bill is submitted to the electors, the Referendum Machinery Provisions Act 1984 shall apply, subject to the modifications set out in the Schedule to this Act, as nearly as practicable in like manner as it applies to a proposed law to alter the Constitution that has been passed by both Houses of the Parliament.

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(3) Where, before a referendum is held in respect of a proposed bill, an Act, substantially in accordance with that Bill, is enacted, a referendum shall not be held in respect of the proposed Bill.

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(4) For the purposes of section 11 of the Referendum Machinery Provisions Act 1984, the argument in favour of the proposed bill may be prepared by the proponent and the argument against the proposed bill may be prepared by the registered opponent (if any).

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Declaration concerning proposed bill

13. Jurisdiction is conferred on the Federal Court of Australia:

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- (a) upon application made by the proponent of a proposed bill or by an applicant to be registered as the proponent of a proposed bill, to declare whether the bill is substantially the same as another proposed bill in respect of which there is a proponent or application has been made to be registered as the proponent; and

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- 5 (b) upon application made by the Attorney-General or the proponent of a proposed bill, to declare whether a particular Act is substantially in accordance with the proposed bill.

Introduction of proposed Bill into Parliament

10 14. Where a majority of the voters voting at a referendum vote in favour of a proposed bill, a Minister shall, subject to the Constitution, seek leave to introduce the bill into a House of the Parliament within 14 sitting days of that House after the declaration of the result of the referendum.

Act not to limit powers of the Parliament

15 15. Nothing in the Act shall be taken to limit the power of the Parliament:

- 20 (a) to pass or reject a bill in accordance with or substantially in accordance with the terms of a proposed bill that has been approved or rejected by the electors at a referendum; or
- 25 (b) to repeal or amend an Act passed by the Parliament that is in accordance with, or is substantially in accordance with, a proposed bill that had been approved by the electors at a referendum, being a bill that was passed by the Parliament following the holding of the referendum.

Costs

30 16.(1) The proponent is liable for, and shall reimburse the Commonwealth, the costs of postage related to the sampling of signatures to the petition as required by this Act.

(2) The proponent is responsible for the cost of posting to electors the arguments in favour of the proposed bill and the registered opponent is responsible for the cost of posting to electors the arguments against the proposed bill, but if both arguments are posted in the same envelope or wrapper, they shall each be responsible for half of those costs.

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Regulations

17. The Governor-General may make regulations, not inconsistent with this Act, prescribing all things permitted to be prescribed, or unnecessary or convenient to be prescribed, for carrying out this Act.

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MODIFICATIONS OF REFERENDUM (MACHINERY PROVISIONS) ACT 1984

1. After section 2, insert the following section:

Distribution to electors of arguments for and against proposed law

"2A. Section 11 of the Principal Act is amended by omitting from subsection (4) 'The' and substituting 'Subject to section 11A, the'."

2. After section 11 insert the following section:

Advertising relating to referendums

"11A. (1) The Commonwealth, a State, a Territory or a local governing body shall not expend money in promoting, directly or indirectly, by way of advertisements of any kind, the case in favour of or against a proposed bill unless the Electoral Commission has approved the proposed expenditure under this section.

"(2) Where the Commonwealth, a State, a Territory or a local governing body proposes to expend money in promoting, by way of advertisements of any kind, the case in favour of or against a proposed bill, the Commonwealth, the State, the Territory or the local

governing body may make a written application to the Electoral Commission for approval of the proposed expenditure.

"(3) An application shall be made in accordance with a form approved by the Electoral Commission and shall set out details of the proposed expenditure.

"(4) Where an application is made in relation to the promotion of the case in favour of or against a proposed bill, the Electoral Commission shall not approve the proposed expenditure unless the Electoral Commission is satisfied that:

- (a) the details set out in the application are correct; and
- (b) the Commonwealth, the State, the Territory or the local governing body, as the case may be, has paid to a fund established for the purpose of promoting the case against or in favour of, as the case may be, the proposed bill an amount not less than the amount of the proposed expenditure.

"(5) The Electoral Commission shall consider each application made under this section and shall give to the applicant:

- (a) if the Electoral Commission approves the proposed expenditure - a certificate (in this section called an 'approval certificate') stating that the Electoral Commission has approved the proposed expenditure and setting out the amount of the proposed expenditure; or
- (b) if the Electoral Commission does not approve the proposed expenditure - a notice in writing of its decision setting out its reasons for that decision.

"(6) This section does not apply to expenditure.

(a) on a matter referred to in a paragraph of subsection 11(4); or

(b) on the salaries and allowances of:

(i) members of the Parliament of a State or the legislature of a Territory or a local governing body; or

(ii) members of the public service of a State or of a Territory or employees of a local governing body.

"(7) The Electoral Commission, the Commonwealth, a State, a Territory, a local governing body or an elector may institute proceedings in the Federal Court of Australia for an injunction preventing the broadcasting, publishing or printing of an advertisement relating to a referendum in respect of which an approval certificate is required but has not been issued.

"(8) Where:

(a) money is paid into a fund under this section; and

(b) the money is not applied, or is not wholly applied, in promoting, by way of advertisements of any kind, the case against or the case in favour of, as the case may be, a proposed bill, the person having control of the fund shall pay that money, or the remainder of that money, as the case may be, to the government or local governing body that paid the money into the fund.

"(9) This section binds the Crown in right of the Commonwealth, of each State and of each Territory.

"(10) For the purposes of this section:

'local governing body' means a local governing

body established by or under a law of a State or Territory, other than a body the sole or principal function of which is to provide a particular service such as the supply of electricity or water, and includes a body established by local governing bodies for the purpose of representing their interests;

'proposed bill' means a bill in respect of which a referendum is being held under the Legislative Initiative Act 1989."